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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

SAM SKURNICK,
Petitioner,

v.

MARTIN RAAKE,
Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

SAM SKURNICK
Petitioner, filing pro se
300 S.E. 5th Avenue, #6030
Boca Raton, Florida 33432
(561) 391-3255

April 19, 1999

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QUESTIONS PRESENTED

1. May a Court of Appeals, without a hearing, dismiss an appeal from a District Court's order when the appeal was timely filed and the required fee paid?

2. May a District Court issue a judgment against an individual without a hearing?

3. May a District Court make an award to a Plaintiff for parties that did not participate in the suit?

LIST OF PARTIES

The caption of the case contains the names of all the parties.

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	7
APPENDIX:	
Petition(s) for Rehearing and Suggestion of Rehearing En Banc Denied by C. of A. January 19, 1999	1a
Motion to dismiss appeal Granted by C. of A.	2a
Objections to Motion To Dismiss Appeal by C. of A.	3a
Order of Reference of Motion To Schedule Contempt Hearing's To Magistrate Judge by District Court	6a
Order For Coontempt Hearing by District Court..	7a
Order To Show Cause by District Court	8a
Order Denying Motion for stay of Judgment Pending Appeal by District Court	9a
Final Judgment by District Court	10a
Motion for Order and Judgment on Motion by Plaintiff Granted by District Court	12a
Suggestion of Hearing En Banc filed by Appellants in the Eleventh Circuit Court of Appeals	14a

TABLE OF AUTHORITIES

CASES

First Options of Chicago, Inc. v. Manual Kaplan, Case No. 94-0560, Decided May 22, 1995, United States Supreme Court (9FLA.L.Weekly Fed. S65)	5

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---

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The Eleventh Circuit Court of Appeals dismissed my appeal without offering a reason. My suggestion of Hearing En Banc was denied on January 19, 1999 after circulation through the Court with no member voting for its approval. (See Appendix, pp. 1a and 2a.)

The District Court issued its final judgment without ordering a hearing and without rendering an opinion other than saying, "The Court has considered the issues, the pertinent portions of the record, and is otherwise fully advised on the premises." This Final Judgment was filed

on March 23, 1998. (See Appendix, pp. 10a-11a) My Notice of Appeal was filed on April 20, 1998.

JURISDICTION

The Eleventh Circuit Court of Appeals denied my suggestion of Hearing En Banc on January 19, 1999. According to Eleventh Circuit rules a suggestion for Hearing En Banc is treated as a petition for rehearing.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit Court of Appeals is believed to be 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

In 1986 I was served with a verified complaint filed by Lloyd and Martin Raake, two brothers whose stock accounts I managed. Despite the fact that both accounts were profitable, and in the case of Lloyd Raake, very profitable, they were induced by Russell L. Forkey, a Florida lawyer, to take advantage of a Florida law that permitted gains to be kept and losses to be repaid by brokers who were not registered in Florida. Lloyd Raake invested a total of $40,000 which grew to $105,000 at the time he terminated his account. He was however at all times a resident of the State of Ohio during the time I handled his account. Mr. Forkey persuaded both brothers to swear that Lloyd Raake was a resident of the State of Florida. The complaint alleged 98 instances of fraud, deceit and misrepresentations on my part, as well as not following instructions they gave me. All of their claims were based upon fictitious conversations that never took place. I had documentary evidence to prove that many of their claims were false. My New York attorney recommended that I take the case to arbitration inasmuch as

our agreement included an arbitration clause. The District Court, Judge Zloch, ordered the case to arbitration which Mr. Forkey appealed to the Eleventh Circuit Court of Appeals on the grounds that the Security Act of 1933 negated such arbitration clauses. The claim was fraudulent because the 1933 Act dealt solely with new issues while every stock I purchased on a discretionary basis for the Raake brothers was listed on The New York Stock Exchange. His appeal was dismissed and I was awarded costs which to this day have not been paid.

Sometime later I received a notice from the AAA that the Raake brothers had requested arbitration of their claims against me. The claim was not signed by either of the Raake brothers according to the rules of the AAA at that time. I called Martin Raake and advised him of the arbitration request attributed to him. His reply was that he was unware of such proceeding and that he had not authorized anyone to act on his behalf.

I learned that Mr. Forkey and the director of the Miami office of the AAA were colleagues in an arbitration school. Because of many irregularities in the arbitration proceedings, I believe that the head of the Miami AAA office collaborated to fix the arbitration proceedings against me. Examples are designating the Miami region for arbitration proceedings where Mr. Forkey was familiar with those chosen to arbitrate disputes. He could pick arbitrators favoring him in the past. The list of arbitrators submitted to me consisted of at least three individuals who had worked for him in his office. They did not inform me of arbitrators who had served on arbitrational tribunals on cases in which Mr. Forkey was involved, and many other signs that the cards were being stacked against me. They did not follow their own rules, especially the ones that required me to be informed in writing that they demanded

arbitration or disclose to me in writing their designated representatives.

I informed them that I did not recognize the authority of the chosen arbitrators until there was a written demand presented to me by the plaintiffs.

The arbitrators met and rendered a decision which was in accordance with Florida law. Mr. Forkey's Ohio client Lloyd Raake was awarded nothing. Mr. Forkey claimed the arbitration decision should be overthrown because it was arbitrary and capricious. The magistrate acting on behalf of the Court recommended that the Court throw out his nothing award on the basis Mr. Forkey recommended. The District Court, Judge Gerald Graham, accepted the magistrate recommendation. I appealed his decision. The Court of Appeals restored the original decision of the arbitrators whose authority I never recognized. The Court made awards to Martin Raake on behalf of the AAA even though I had settled any claims they had made against me.

The District Court did not conduct a hearing on Mr. Forkey's claims.

I filed a timely notice of appeal, paid the required fee, and five times made written offers to put up any cash deposit the Court felt was appropriate to protect the interests of the Plaintiff pending the outcome of my appeal. A check I deposited with the District Court clerk for the full amount of the judgment plus 10% interest was returned to me. I am now being cited for contempt of court and being threatened with being sentenced to jail for exerting my law given rights to appeal to the courts for justice. That is the situation as I write this appeal.

REASONS FOR GRANTING THE WRIT

1. I believe this case is governed by the Supreme Court decision in the case of *First Options, Inc. vs. Manual Kaplan*, U.S. Supreme Court Case No. 94-0560, Decided May 22, 1995. Kaplan raised the question of arbitrability. He did not recognize the authority of the arbitrators. The decision of the U.S. Supreme Court states:

> "If . . . the parties did not agree to submit the arbitrability question to arbitration, then the Court should decide that question just as it would decide any other question that the parties did not submit to arbitration, namely independently. These two questions flow inexorably from the fact that arbitration is simply a matter of contract between the parties; it is a way to resolve these disputes that the parties agreed to submit to arbitration."

I believe the other party did not live up to the terms of our arbitration agreement and I was justified in not attending the meeting of the alleged arbitrators. My attendance would have been interpreted as recognizing their legitimacy.

2. The compelling reason for granting the writ is that the judgment was procured because of a fictitious account of more than 98 events, conversations, and representations that never took place, compiled by a lawyer who committed the crime of inducing his clients to swear under oath to their truthfulness. Furthermore, he tricked lower judges to render enormous judgments in his favor as a result of his fraudulent representations and those of his clients who he induced to swear to their truthfulness. He took advantage of the greed of his clients to cause them to become partners in his criminal activities. Not only were his clients partners to his criminal activities, but

he also convinced a naive magistrate and possibly an overworked District Court judge to help him gain the benefits of his criminal activities. The magistrate recommended that the "nothing" award to Lloyd Raake be rescinded because it was arbitrary and capricious even though it conformed 100% to the letter of Florida law. It is the judgment of this same judge I am appealing for a second time.

The oldest well known law is the Ten Commandments. Two of those involve prohibitions against perjury. One which prohibits taking the Lords name in vain, has led to the custom of having witness swear with a hand on a bible. The other commandments says, "Thou shalt not bear false witness." These two commandments illustrate how important it is for courts to demand that sworn statements be truthful. I recognize that it may be impractical to try and punish all parties who commit perjury. However, it is a simple matter for a Court to deprive an individual of the benefits derived from his perjury or inducing others to commit perjury.

I believe based upon the facts I have and am prepared to present to the courts, that the lower courts through negligence or indifference have so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for this Court's supervisory power to be exercised.

CONCLUSION

On the basis of the facts here presented and which are also available on demand, the best interests of the Government and the people you represent requires that you grant the Writ.

Respectfully submitted,

SAM SKURNICK
Petitioner, filing pro se
300 S.E. 5th Avenue, #6030
Boca Raton, Florida 33432
(561) 391-3255

April 19, 1999

APPENDIX

APPENDIX

APPENDIX

[Filed Jan. 19, 1999]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-4685

LLOYD E. RAKKE, MARTIN RAAKE,
Plaintiffs-Appellees,

versus

SAM SKURNICK,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida

Before: ANDERSON, EDMONDSON and DUBINA, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ Joel F. Dubina
JOEL F. DUBINA
United States Circuit Judge

[Filed Oct. 20, 1998]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-04685

LLOYD E. RAKKE, MARTIN RAAKE,
Plaintiffs-Appellees,

versus

SAM SKURNICK,
Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Florida

BEFORE: ANDERSON, EDMONDSON and DUBINA, Circuit Judges.

BY THE COURT:

Appellee Martin Raake's motion to dismiss this appeal is GRANTED.

Appellant's motion for stay of judgment pending appeal is DENIED AS MOOT.

[Filed Jun. 12, 1998]

11TH CIRCUIT COURT OF APPEALS

Case No: 98-4685
LT Case No: 86-6772-GRAHAM

SAM SKURNICK,

Appellant

v.

MARTIN RAAKE

Appellee

OBJECTION TO APPELLEE'S MOTION TO DISMISS APPEAL

Sam Skurnick, Pro Se, in the matter of Skurnick v Raake, responds to Appellee's *Motion to Dismiss Appeal and Memorandum of Law in Support Thereof.*

Argument

1. Appellant has filed his appeal permitted by right of law by filing a notice of appeal with the clerk of the district court within the time allowed by Rule 4 and paid the clerk the required fee. Appellee's motion to dismiss is in fact, an attempt to deny me my law given right.

Argument

2. Appellee argues that the District Court has a valid basis for his decision to enter his judgment against me. It stands to reason that District Court orders are issued on what appears to be a reasonable basis. If a demonstration that a District Court acted on a reasonable basis was sufficient cause to dismiss an appeal, most appeals

would be dismissed. It is for the Court of Appeals to decide if the appeal has, or does not have, merit. If the appeal is without merit, the Court of Appeals could deny the appeal, and penalize the Appellant with an award of costs to the Appellee.

Argument

3. Appellant, Pro Se, believes that the District Court, that issued the judgment against me no longer had jurisdiction in this case. Appellee filed suit, "In the Circuit Court of the 15th Judicial Circuit, in and for Palm Beach County," (case no: CL 96 010907) for $10,000 plus interest, stating that both Martin Raake and Sam Skurnick were residents of Florida. This implies that the Florida Circuit Court had jurisdiction (See Exhibit B—*Complaint* filed December 26, 1996 in the Circuit Court. See Exhibit C, my answer to the complaint. See Exhibit D, *Notice to Set Motion Hearing*).

4. On the day set for the Circuit Court hearing, Plaintiff Martin Raake, moved the Circuit Court for Voluntary Dismissal Without Prejudice. Appellant, Sam Skurnick, objected to the Dismissal Without Prejudice. To this day, appellant has not received any notice from the Circuit Court on the motion to Dismiss Without Prejudice, or on his objection to the Motion.

5. The facts in Paragraphs 3 and 4, above, as well as other facts, cause the appellant to believe that he has valid grounds for his appeal.

6. For the reasons given in the foregoing paragraphs, Appellant requests this Court of Appeals to deny the Appellee's Motion.

SAM SKURNICK
Appellant, Pro Se
300 S.E. 5th Ave. #6030
Boca Raton, FL 33432
Tel: (561) 391-3255

/s/ Sam Skurnick
SAM SKURNICK

[Certificate of Service Omitted]

[Filed Mar. 26, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

ORDER OF REFERENCE OF MOTION
TO SCHEDULE CONTEMPT HEARINGS
TO MAGISTRATE JUDGE

THIS CAUSE is before the court *sua sponte*. Pursuant to 28 U.S.C. § 636 and the Magistrate Rules of the Southern District of Florida, the above-captioned cause is hereby referred to United States Magistrate Judge Turnoff to conduct a contempt hearing. Magistrate Turnoff shall issue a Report & Recommendation on whether Defendant should be held in contempt of court for failing to comply with this Court's Order dated February 12, 1999.

DONE AND ORDERED IN Chambers at Miami, Florida, this 26th day of March, 1999.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Feb. 12, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

ORDER

THIS CAUSE came before the Court on Plaintiff's Motion to Hold Defendant in Contempt, filed November 24, 1998.

THE COURT has considered the motion and the pertinent portions of the record, and being otherwise fully advised in the premises. The record shows no evidence of a stay having been granted by any court. Accordingly, it is

ORDERED AND ADJUDGED that the Defendant shall pay the judgment within 10 days of the date of this Order. If the Defendant fails to comply with this Order, the Court SHALL IMMEDIATELY CONDUCT A CONTEMPT HEARING.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of February, 1999.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Jan. 29, 1999]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

ORDER TO SHOW CAUSE

THIS CAUSE came before the Court Plaintiff's Motion to Hold Defendant in Contempt, filed November 24, 1998.

On March 23, 1998, this Court entered final judgment against the Defendant, Sam Skurnick in the amount of $25,525.74. Thereafter, the Plaintiff served discovery, in aid of execution, upon Defendant. On May 20, 1998, the Defendant filed a Motion for Protective Order. On June 22, 1998, this Court denied that motion. Defendant has repeatedly failed to appear for depositions in aid of execution. Accordingly, it is

ORDERED AND ADJUDGED that the Plaintiff shall file a response with the Court no later than Friday, February 12, 1999 to show good cause why this Court should not hold him in contempt.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of January, 1999.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Jul. 27, 1998]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,

Plaintiffs,

vs.

SAM SKURNICK,

Defendant.

ORDER

THIS CAUSE came before the Court upon Defendant's Motion for Stay of Judgment Pending Appeal, filed July 6, 1998.

THE COURT has considered the Motion and the pertinent portions of the record, and being otherwise fully advised in the premises, it is

ORDERED AND ADJUDGED that the Motion is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 27th day of July, 1998.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Mar. 23, 1998]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

FINAL JUDGMENT

THIS CAUSE came on for consideration before the Court upon Plaintiff's Motion for Order and Judgment (D.E. 176), filed May 19, 1997.

THE COURT has considered the issues, the pertinent portions of the record, and is otherwise fully advised in the premises. Therefore, it is

ORDERED AND ADJUDGED that Plaintiff is awarded a judgment against Defendant Sam Skurnick in the total amount of $25,525.74, which includes:

(1) The subject award of $10,000.00;

(2) Administrative fees and expenses of the American Arbitration Association totaling $3,000.00;

(3) The award includes $1,800.00 for fees previously paid by the Plaintiff;

(4) The award further includes interest on the balance of $14,800.00, from October 2, 1990 to May 6, 1997, in the amount of $10,725.74.

DONE AND ORDERED in Chambers at Miami, Florida, this 23rd day of March, 1998.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

[Filed Mar. 12, 1998]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 86-6772-CIV-GRAHAM

MARTIN RAAKE, *et al.*,
Plaintiffs,

vs.

SAM SKURNICK,
Defendant.

THIS CAUSE came before the Court upon Plaintiff's Martin Raake, Motion for Order and Judgment, filed May 19, 1997.

THE COURT has reviewed the Motion, the pertinent portions of the record, and is otherwise fully advised in the premises.

On June 29, 1993, this Court entered an Order Affirming Magistrate's Report And Recommendation (D.E. 121) and vacated the arbitration award in part and granted damages to Lloyd Raake (or his estate) in the amount of $84,824.77, plus interest, and awarded damages to Martin Raake in the amount of $9,436.16, plus interest. This Court also granted Plaintiffs attorney's fees.

The Eleventh Circuit relied on *Brown v. Rauscher Pierce and Refsnes, Inc.*, 994 F.2d 775 (11th Cir. 1993) and reversed this Court's Order Affirming Magistrate's Report And Recommendation (D.E. 121). The Eleventh Cir-

cuit remanded the case to this Court with instructions to reinstate the award of the arbitrators.

In light of the above, it is

ORDERED AND ADJUDGED that Defendant's Motion for Dismissal of Motion for Order and Judgment filed May 29, 1997 is hereby DENIED. It is further,

ORDERED AND ADJUDGED that Plaintiff's, Martin Raake, Motion for Order and Judgment filed May 19, 1997 is GRANTED. It is further

ORDERED AND ADJUDGED that the Clerk of Court shall REINSTATE the Award of the Arbitrators and AFFIRM the decision of arbitration panel.

DONE AND ORDERED in Chambers at Miami, Florida, this 12th day of February, 1998.

/s/ Donald L. Graham
DONALD L. GRAHAM
United States District Judge

IN THE
UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 98-4685

SAM SKURNICK,
Defendant-Appellant

vs.

MARTIN RAAKE,
Plaintiff-Appellee.

SUGGESTION OF HEARING EN BANC

On Appeal from the United States District Court
for the Southern District of Florida

DC Dkt No.: 86-06772-CIV-DLG

Submitted by:

SAM SKURNICK, *Pro Se*
Appellant

300 S.E. 5th Avenue
#6030
Boca Raton, FL 33432

Tel: (561) 391-3255

CERTIFICATE OF INTERESTED PERSONS

Pursuant to the Rules of the United States Court of Appeal for the Eleventh Circuit, Rule 28-2(b), the undersigned hereby certifies the following persons or entities have an interest in the outcome of this case.

Honorable Donald L. Graham, United States District Judge for the Southern District of Florida.

Sam Skurnick—Appellant

Martin Raake—Appellee

Russell L. Forkey, P.A.—Counsel for Appellee.

by /s/ Sam Skurnick
SAM SKURNICK

Certification of Appellant Acting PRO-SE

I, SAM SKURNICK, acting Pro Se, express a belief, based on a reasonable and studied judgment, that the panel decision is contrary to the following decision of the Supreme Court of the United States.

Case No. 94-560 First Options of Chicago, Inc. v. Manuel Kaplan.

I express a belief, based on a reasoned and studied judgment, that this appeal involves one or more questions of exceptional importance.

1. May this Court, without a hearing, arbitrarily dismiss an appeal from a judgment issued by a District Court even though the Notice of Appeal was timely filed and the required fee paid?

2. Does this Court wish to use its Government given powers to facilitate Russell L. Forkey to benefit from his criminal activities of inducing individuals to swear to the truth of completely fictitious complaints he prepared for them?

/s/ Sam Skurnick
SAM SKURNICK *Pro Se*

STATEMENT OF THE ISSUES MERITING EN-BANC CONSIDERATION

1. A district court without a hearing rendered a judgment against me based upon an alleged arbitration decision I refused to recognize as valid. I exercised my right to appeal and filed a timely notice and paid the required FRAP 3 fee. I also filed a motion for a stay of the district court's injunction pending the outcome of my appeal. I offered to make a cash deposit with the court for any amount they considered reasonable pending the outcome of my appeal. I conformed with the provisions of FRAP 8(a) and (b). A motion was made to dismiss my appeal. I objected to the motion and gave my reasons. The motion to dismiss was granted and my offer to make a cash deposit that the court deemed appropriate was dismissed as "moot." I feel that my law-given right to appeal a district court's judgment was unjustly denied me, and that this is an issue that merits En-Banc consideration.

2. The American Arbitration Association (AAA) submitted to me an alleged claim for arbitration from Martin Raake. His signature was not on the claim nor was there any notice that he authorized Russell L. Forkey, P.A. to act on his behalf. I called Martin Raake and advised him of these facts. He informed me that he was not aware of such a claim being filed on his behalf; that he did not file such a claim; and that he had not authorized any one to act on his behalf. The AAA informed me that there was nothing in their records to indicate that Martin Raake had filed a claim for arbitration with them, and that they had no record of Martin Raake giving Russell L. Forkey authorization to represent him. They arranged a telephone conference with a panel of arbitrators who informed me that at the arbitration hearing I could present my case and that they, the arbitrators, would decide if a valid arbitration request had been made in accordance with the

provisions of the arbitration agreement. I replied that this procedure was unsatisfactory to me inasmuch as they would be ruling on a matter in which they had personal interest, namely the fees they would receive for their services.

In the case of First Options, Inc. v. Manuel Kaplan, U.S. Supreme Court Case No. 94-560, Kaplan raised the question of arbitrability. The decision of the U.S. Supreme Court states, "If . . . . the parties did not agree to submit the arbitrability question to arbitration, then the Court should decide that question just as it would decide any other question that the parties did not submit to arbitration, namely independently. These two questions flow inexorably from the fact that arbitration is simply a matter of contract between the parties; it is a way to resolve those disputes—but only those disputes that the parties agreed to submit to arbitration."

STATEMENT OF THE COURSE OF PROCEEDINGS AND THE DISPOSITION OF THE CASE

In 1986 I was served with a verified complaint filed by Lloyd and Martin Raake, two brothers whose stock accounts I managed. The complaint alleged 98 instances of fraud, deceit, and misrepresentations on my part, as well as not following instructions they gave me. I had documentary evidence to prove that many of the allegations were false. I went to a lawyer with my documents to handle the case for me. He advised me to claim my right to arbitrate the claims against me because I had strong grounds to make a counterclaim before an arbitration tribunal. I sought the Court to order the case to arbitration, which the Court did. The Raake brothers through their attorney then appealed the District Court's decision to the 11th Circuit Court of Appeals claiming that because they claimed I had violated the Security Act of 1933, they

were exempt from the Court order to go to arbitration. Their claim was fraudulent because the Securities Act of 1933 dealt only with the issuance of new securities while *every* security I purchased for the Raake brothers was an existing registered security listed on The New York Stock Exchange. The Court of Appeals dismissed the Raake appeal.

Some time later I received a notice from the AAA that the Raake brothers had requested arbitration of their claims against me. The claim was not signed by either of the Raake brothers. I called Martin Raake and advised him of the arbitration request attributed to him. His reply to me was that he was unaware that such an event took place. He stated that he had not initiated the request for arbitration, nor had he authorized anyone to act on his behalf in this matter.

I called the AAA and advised them of what Martin Raake told me. I also sent them a $300.00 deposit on my fee for a counterclaim of $100,000.00, the total fee being $1,500.00. There was a deadline for filing a counterclaim. The deposit I sent them was to insure my right to file my counterclaim. I informed the AAA that my participation in the processing of the arbitration was solely to expedite the procedure, and was conditioned upon my receiving a signed notice by the Raake brothers that they were instituting arbitration proceedings against me, or that they had authorized Russell L. Forkey to represent them in this matter. I argued that had I won my counterclaim, there was no legal basis for me to collect the award since the Raake brothers could rightfully claim they had not initiated any arbitration proceedings against me, nor had they given me any notice of an authorized representative to do so, as required by the rules. Thus even if I won an award I could not legally collect it.

What is more I would be out the $1,500.00 fee I would have paid to file my counterclaim.

Some time later I was advised of a scheduled arbitration hearing in Florida. One of the chosen arbitrators informed me that the arbitration panel would decide if the arbitration proceedings were in accordance with the rules. I replied that I could not accept their decision on the matter since there was no valid request for an arbitration by the Raake brothers or by a representative authorized by them in accordance with the rules of the AAA.

The panel met without my presence, and awarded nothing to Lloyd Raake and $10,000.00 to Martin Raake.

Russell Forkey then went into the District Court to challenge the legality of the "nothing" award to Lloyd Raake, claiming that under Florida law he was entitled to recover all the losses he incurred even though the value of his account increased 187% from the total of what he gave me to invest for him. I replied that even though I did not recognize the legal authority of the arbitration panel, they acted properly in the case of Lloyd Raake. He could not demonstrate that he lost as much as one penny as a result of transactions I made for him in Florida. At all times during our relationship he was a resident of Ohio. Nevertheless he and Martin Raake swore that at all times he was a resident of the State of Florida.

In October, 1991, the case was reassigned to Judge Donald Graham. Judge Graham referred the case to Magistrate Turnoff. He recommended that Lloyd Raake be awarded $84,825.00 plus interest from 1985 as well as $32,662.00 for attorneys' fees. He stated that the arbitrators' "nothing" award be overthrown because it was "arbitrary and capricious."

Judge Graham accepted the recommendation of the magistrate, and awarded Lloyd Raake over $150,000.00 in damages and issued a judgment against me for this large amount of money. I appealed the decision of the district court. The Court of Appeals arranged for a hearing. I was given fifteen minutes to present my case. I mentioned that I did not recognize the validity of the arbitration proceedings. I felt I had an extraordinarily sound case in arguing against the judgment awarded Lloyd Raake. There was proof in the record that he was at all times a resident of Ohio. It was impossible for him to demonstrate that he suffered as much as one penny of losses based upon stocks bought and sold for him in Florida. Therefore, the arbitrators acted 100% in conformance with Florida law. Because of the extraordinary high award given to Lloyd Raake by the District Court, I had to use all my time to defeat the award to Lloyd Raake.

I could not afford to spend my time arguing against the validity of the arbitration proceedings when I felt strongly that the Court would uphold the panel's "nothing" award to Lloyd Raake.

On the basis that both Martin Raake and I were residents of Florida, Russell Forkey instituted an action in a civil court of Florida to collect the arbitrators' award to Martin Raake. I argued that the arbitration was not valid because Martin Raake never initiated arbitration proceedings against me, and that there is no record in the proceedings that he ever authorized Russell Forkey to represent him in such proceedings. In fact there is no record of such proceedings in the AAA. All attempts to examine the record of the proceedings have proved futile. A day was set for a hearing in the state's Civil Court. On the day of the hearing Russell Forkey asked for the case to be dismissed without prejudice. I objected to that

motion. To this day I have not had a response from the Civil Court on Mr. Forkey's motion or my objection to his motion.

Mr. Forkey then initiated an action in Judge Graham's district court for a judgment against me which Judge Graham granted him without holding a hearing on the matter. I filed an appeal against his judgment and offered on three different occasions to deposit with the Court clerk any amount he would consider adequate to satisfy the judgment he issued against me. He denied my motions. Russell Forkey moved this Court to dismiss my appeal which was timley filed. The Court granted Mr. Forkey's motion to dismiss my appeal. Previously, I had moved the Court for a stay of the judgment in accordance with the provisions of FRAP 8(a) and (b). The motion was denied because it was declared "moot." The Court of Appeals' panel gave no reason for denying me my right to appeal.

This request for a hearing En-Banc, is for the purpose of permitting me to carry my quest for justice to the limits provided by law.

STATEMENT OF THE FACTS TO ARGUMENT THE ISSUES

1. It is a fact proven by various court documents that Russell L. Forkey prepares fictitious complaints based upon conversations between parties and then induces his clients to swear to their truthfulness with the inducement that they will profit by their action. He then proposes a settlement with stock brokers that would be less costly to them than the legal expenses they would expend to win their cases. I believe this is a form of "extortion."

2. It is a fact that Martin Raake did not submit to me a claim for arbitration as required by the rules of the AAA.

3. It is a fact that Martin Raake did not inform me that Russell L. Forkey was his representative for arbitration proceedings against me.

4. It is a fact that the AAA has no record of Martin Raake making an arbitration request or authorizing Russell Forkey to be his representative.

5. The AAA could not provide a record of the alleged arbitration proceedings after several attempts to see them for use in preparation of an appeal.

ARGUMENT AND AUTHORITIES

The pertinent part of section 6 of the AAA rule for initiating an arbitration proceeding is as follows: Arbitration under an arbitration provision in a contract shall be initiated in the following manner:

a. The initiating party shall give written notice to the other party of its intention to arbitrate (demand).

No such notice was given to me or to the AAA by Martin Raake, or by his late brother Lloyd Raake.

It may be argued that such notice could be given by a duly appointed representative. I accept this argument.

Section 22 of the AAA rules regarding Representation states: "Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the AAA of the name and address of the representative at least three days prior to the date set for the hearing at which that person is first to appear When such a representative initiates an arbitration, or responds for a party, notice is deemed to have been given."

Here "*such a representative*" refers to a representative whose name and address has been given to the other party and the AAA.

The facts of this case—all of which are in the record of the proceedings—support my contention that:

1. Martin Raake is not a legitimate plaintiff.

2. There were no legitimate arbitration proceedings.

3. There were no legitimate arbitrators.

4. There was no legitimate arbitration decision.

5. Had I won my counterclaim before the alleged arbitration panel, Martin Raake could avoid liability for any award against him for the same reasons that I have not recognized the arbitration award.

These facts and arguments show that I had a legitimate basis for questioning the legitimacy of the arbitration proceedings. My interpretation of the Supreme Court decision in the First Options v. Kaplan case, which I have previously quoted, is applicable to this case. It was for a Court to decide whether the arbitration was in accordance with the contract to arbitrate. Had a Court ruled prior to the alleged arbitration hearing that Martin Raake was a legitimate plaintiff, then if I won my conterclaim I would have had a court decision to support my claim.

The prime beneficiary of the judgment issued against me is Russell L. Forkey. He has been engaged in the criminal activity of preparing fictitious complaints against brokers and inducing his clients to swear to their truthfulness, making those clients partners to his criminal activities. He knows that the courts are so overwhelmed with cases that require attention that the judicial system cannot cope with the many cases involving perjury each day. It may be difficult for the Court to punish Russell L. Forkey for his criminal activities within the court system but it is not difficult for the courts to deprive him of the benefits of his criminal activities.

CONCLUSION

Based upon the facts and arguments presented, the Court of Appeals should vacate the order to dismiss my appeal of the judgment issued against me by the District Court.

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[Certificate of Service Omitted]